

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*DLG 02378*

*10,892*

FILE: B-194980

DATE: July 27, 1979

MATTER OF: S. T. C. Construction Company

*[Protest of Bid Rejection For Surety Not Being on Approved List]*

**DIGEST:**

1. Protest may be decided without agency report where it is apparent from submission that protest is without legal merit.
2. Low bid is nonresponsive and not for consideration where bidder's corporate surety was not listed in Treasury Circular 570 as requirement in solicitation for adequate surety is material to bid and failure to provide approved surety may not be waived or excused.

S.T.C. Construction Company (STC) has protested the rejection of its bid submitted under IFB No. 4450-79-A-R issued by the National Parks Service, Department of the Interior.

It is clear from STC's submission that its protest is without legal merit and, therefore, we have not obtained an agency report before reaching our decision. Klean-Vu Maintenance, Inc. B-194054, February 22, 1979, 79-1 CPD 126.

According to STC's submission, its low bid is not being considered for award because the corporate surety on its bid bond was not listed in Treasury Department Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." STC argues that its bid bond as submitted is adequate, that an honest mistake was made in not utilizing a surety on the approved list and that it is willing to

substitute a bid bond signed by an approved surety for the objectionable bond. Also, STC states that bidders were not put on adequate notice of the requirement that the surety be on the approved list.

In Alpha Sigma Investment Corp., B-194629.2, May 17, 1979, 79-1 CPD 360, we considered all of the issues presented by STC here, based on a similar factual situation, and found the bid to be nonresponsive. In that decision, we noted that failure to provide an acceptable bid guarantee will render a bid non-responsive and that the failure may not be waived or excused except in limited circumstances, not applicable here. 46 Comp. Gen. 11 (1966).

In Alpha, supra, regarding the contention that the bid documents did not sufficiently alert bidders to the requirement, while noting the lack of mention of Circular 570 in the solicitation, we observed:

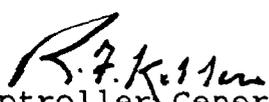
"Standard Form 21, to which the protester refers, states that the bid must be accompanied by a 'good and sufficient surety.' This language puts the potential bidder on notice that not every surety will be considered adequate, and the burden at this point is on the bidder to determine whether its bonding company is acceptable to the Government. Further, SF 22, Instructions to Bidders, which supplements SF 21, states at paragraph number four,

"\* \* \* failure to furnish the bid guarantee in proper form and amount \* \* \* may be cause for rejection of the bid.'

"The requirement to provide an acceptable surety is stated on the forms which ASI received. It is incumbent upon the would-be bidder to determine which of the

sureties available are acceptable to the Government. To do so, the bidder would have to look outside the four corners of the forms. Chemical Technology, Inc., [B-192893, December 27, 1978, 78-2 CPD 438]. ASI, by consulting the Federal Procurement Regulations in this regard, would have learned of the existence of a convenient list of acceptable sureties, Treasury Circular 570. Since the regulations are accessible to all bidders, it is not unreasonable to expect that bidders in need of information to supplement the provided forms would check that source. ASI's failure to do so resulted in its furnishing a bond from a surety that apparently is unacceptable to the Government, and its bid therefore is nonresponsive. Since the bid was nonresponsive, ASI may not now amend it to make it responsive. Permitting such an amendment would be contrary to established competitive procurement procedures. Newport Ship Yard, Inc., B-191703, May 25, 1978, 78-1 CPD 400; FPR § 1-2.406-3(a) (1964 ed. amend. 165)."

Accordingly, the protest is summarily denied.

  
Deputy Comptroller General  
of the United States